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OFFICE OF PETITIONS

In re Application of	:	
FRIEDBAUER et al.	:	
Application No. 10/648,637	:	DECISION ON APPLICATION
Filed: 08/25/2003	:	FOR
Attorney Docket No. 659-1765	:	PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed August 29, 2007. Applicants request correction of the patent term adjustment from one hundred ten (110) days to four hundred thirty-one (431) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **four hundred thirty-one (431) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 23, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date was 110 days. Applicants timely filed the instant application for patent term adjustment¹. Applicants

¹ PALM Records indicate that the Issue Fee payment was received on August 29, 2007.

dispute the reduction of 321 days for applicants' delay in responding to the Notice to File Missing Parts of November 17, 2003.

Applicants state that the Office mailed a Notice to File Missing Parts of Nonprovisional Application on November 2, 2004. Applicants assert that they filed their response on January 3, 2005, within three months of the mailing date of the Notice to File Missing Parts. Therefore, applicants aver that they did not fail to engage in reasonable efforts to conclude processing of the application. See 37 CFR 1.704(b). Applicants note that Patent Term Adjustment History in the Patent Application Information Retrieval (PAIR) system indicates that the Notice to File Missing Parts was originally mailed, as well as withdrawn, on November 17, 2003. Applicants assert that they did not receive the Notice to File Missing Parts of November 17, 2003, and that a copy of the Notice is not part of the Image File Wrapper (IFW) accessible through PAIR. Therefore, applicants request a correction of the mailing date of the Notice to File Missing Parts to November 2, 2004, for purposes of calculating the period of adjustment of the patent term pursuant to 37 CFR 1.704(b).

Consideration of applicants' evidence is unnecessary. The Image File Wrapper is the official record of the application. A review of IFW and other Office records support a conclusion that a Notice to File Missing Parts was originally prepared on November 17, 2003, but that no such Notice was mailed to applicants on that date. Moreover, the Notice to File Missing Parts of November 17, 2003, is not of record in the application.

Under these circumstances, the November 2, 2004 date of mailing of the Notice to File Missing Parts should be properly used for purposes of calculating compliance with 37 CFR 1.704(b). The response of January 3, 2005, was complete and proper, and was filed within the three-month period under 37 CFR 1.704(b). Thus, the Office should not have assessed applicants a delay of 321 days.

In view thereof, the patent term adjustment at the time of the mailing of the Notice of Allowance is 431 days (494 days of PTO delay - 63 days of applicant delay = 431 days).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being referred to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded and is cut-off by virtue of the filing of a request for continued examination).

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Thursday
Date: 11/29/2007

PALM INTRANET

Time: 20:13:59

PTA Calculations for Application: 10/648637

Application Filing Date:	08/25/2003	PTO Delay (PTO):	494
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	384
Post-Issue Petitions:	0	Total PTA (days):	431
PTO Delay Adjustment:	321		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
61	11/29/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	321		
53	07/23/2007	MAIL NOTICE OF ALLOWANCE			
52	06/27/2007	ISSUE REVISION COMPLETED			
51	06/27/2007	DOCUMENT VERIFICATION			
50	06/27/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
49	06/25/2007	NOTICE OF ALLOWABILITY			
48	05/08/2007	DATE FORWARDED TO EXAMINER			
47	05/05/2007	RESPONSE AFTER NON-FINAL ACTION			
46	02/06/2007	MAIL NON-FINAL REJECTION			
45	02/05/2007	NON-FINAL REJECTION			
44	01/25/2007	DATE FORWARDED TO EXAMINER			
43	01/19/2007	RCE- AF PROCESSED			
42	01/25/2007	DATE FORWARDED TO EXAMINER			
41	01/19/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		57	32
40	01/25/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
39	01/19/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	01/19/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
37	01/10/2007	MAIL ADVISORY ACTION (PTOL - 303)			
36	01/08/2007	ADVISORY ACTION (PTOL-303)			
35	12/29/2006	DATE FORWARDED TO EXAMINER			
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33	12/18/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			

32	08/23/2006	MAIL FINAL REJECTION (PTOL - 326)			
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30	06/09/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	06/09/2006	REFERENCE CAPTURE ON IDS			
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28	06/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	06/16/2006	DATE FORWARDED TO EXAMINER			
26	06/09/2006	RESPONSE AFTER NON-FINAL ACTION		6	24
25	03/09/2006	CORRESPONDENCE ADDRESS CHANGE			
24	03/03/2006	MAIL NON-FINAL REJECTION	494		-1
23	03/02/2006	NON-FINAL REJECTION			
22	12/23/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	02/23/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	12/23/2003	REFERENCE CAPTURE ON IDS			
19.7	12/23/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	12/23/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	12/29/2003	PRELIMINARY AMENDMENT			
17	02/23/2006	CASE DOCKETED TO EXAMINER IN GAU			
16	01/18/2005	APPLICATION RETURN FROM OIPE			
15	01/18/2005	APPLICATION RETURN TO OIPE			
14	01/18/2005	APPLICATION DISPATCHED FROM OIPE			
13	01/18/2005	APPLICATION IS NOW COMPLETE			
12	01/03/2005	ADDITIONAL APPLICATION FILING FEES		321	5
11	01/03/2005	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
9	08/25/2003	ADDITIONAL APPLICATION FILING FEES			
8	08/25/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	11/17/2003	PRE-EXAM OFFICE ACTION WITHDRAWN			
5	11/17/2003	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			

4	11/07/2003	CASE CLASSIFIED BY OIPE			
3	11/07/2003	CLEARED BY OIPE CSR			
2	09/10/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/25/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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